IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CWP No.9139 of 2007
Date of decision: 10. 7.2007

Salinder Kumar

...Petitioner

vs.

The Munda Khera Cooperative Credit & Service Society Limited

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. BK Bagri, Advocate, for the petitioner.

JUDGMENT:

The petitioner challenges award of the Labour Court rejecting the claim of the workman that termination of his services was not justified.

Case of the workman before the Labour Court was that he was appointed as a Clerk on 16.1.1996 at a monthly salary of Rs.2000/- and his services were terminated on 13.11.2000 in violation of Section 25-F of the Industrial Disputes Act, 1947 (for

short, 'the Act').

The management contested the claim and submitted that appointment of the petitioner itself was illegal and he manipulated his appointment in collusion with the nominated board of Administrators which was not approved by the Registrar. He has not passed any written test as required as per rules of appointment. Vide order dated 26.5.2003, passed by the Secretary to the Haryana Government, the appointment was held to be illegal.

The Labour Court held that the appointment of the workman was void ab initio being against mandatory rules, without approval of the competent authority and without inviting applications from eligible candidates and in these circumstances, he was not entitled to reinstatement.

We have heard learned counsel for the petitioner and perused the record.

Apart from the judgments relied upon by the Labour Court in support of its view, we find that the issue is also covered against the petitioner by judgment of the Hon'ble Supreme Court in **State of UP v. Neeraj Awasthi** (2006) 1 SCC 667, wherein it was observed:-

> 36.Submission of the learned counsel appearing on behalf of the employees is that the procedures prescribed by reason of the Regulations are applicable to the regular

employees. It is so. The question which, however, falls for consideration is as to whether any appointment can be made dehors the provisions of the Act and the Rules. Our attention has been drawn to the definition of "employee" which does not include persons employed on daily wages, work-charged and/or part-time basis. If the expression "employee" does not bring within its fold any person employed on daily wages, work-charged or on part-time basis, the same would mean that the persons so appointed would not be employees within the meaning of the said Regulations. It would, therefore, not be correct to contend that the Market Committee or the Board has the jurisdiction to appoint anybody on daily wages, work-charged or on part-time basis dehors the Rules. The power to make appointments by the Committee or the Board whether contained in Section 23 or Section 26-F of the Act are statutory in nature. In the absence of any power conferred upon them to appoint any employee dehors the provisions of Sections 23 and 26-F and the Regulations framed thereunder, indisputably would mean that such appointments are dehors the Act and the Rules. The Rules also provide that any appointment made by the Committee under sub-section (1) of Section 23 shall be

intimated within 30 days of such appointment to the Director or to such other officer as may be authorised by the Director in this behalf. It implies that although the Market Committee may have power to make appointments, such appointments can be made in relation to the posts created therefor by the Board wherefor requisite intimation has to be given to the Director or the officer authorised in this behalf. We may assume that for meeting the exigencies of situations it may be possible for the Committee or the Board to appoint a person on ad hoc basis. Such ad hoc employees, however, being not "employees" within the meaning of the provisions of the Act and the Regulations, a legal relationship between the employer and the employee would not come into being. As no legal relationship of employer and employee comes into being, evidently, such persons do not derive any status. They *a fortiori* derive no legal right to continue in service subject, of course, to compliance with the provisions of any other Act or the Rules conferring certain benefits to them. (See *State of M.P.* v. *Dharam Bir, (1998) 6 SCC 165*).

60.In *Manager, Reserve Bank of India* v. *S. Mani(2005) 5 SCC 100*, *Umarani,(2004) 7 SCC 112,* was followed holding that in law

240 days of continuous service by itself does not give rise to permanence which reason has weighed with the opinion of the learned Single Judge of the High Court.

76. In the instant case, furthermore, no post was sanctioned. It is now well settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were available, it is for the Board or the Market Committee to fill up the same in terms of the existing rules. They, having regard to the provisions of the Regulations, may not fill up all the posts."

In view of above, this petition is dismissed.

(Adarsh Kumar Goel)
Judge

July 10, 2007
'gs'

(Ajai Lamba)
Judge